

## **Service Area Redefinition Is Critical to the Fulfillment of the Purposes of the Act**

- I. The 1996 Act's twin goals are to promote competition and to preserve and advance universal service.
  - A. The FCC continues to stress competitive neutrality as a bedrock principal of universal service.
  - B. Yet, a wireless ETC is competitively disadvantaged if it is disqualified solely by a mismatch between its FCC-licensed area and a rural ILEC's study area.
  - C. The Colorado PUC has concluded that redefinition "will create incentives for competitive entry and, thus, will help to ensure that quality telecommunications services will be available to consumers within the service areas of the affected rural ILECs at reasonable, affordable, and just rates."
  - D. The Washington Utilities and Transportation Commission, which obtained FCC concurrence in redefining 20 rural ILEC service areas along wire-center boundaries in 1999, recently emphasized that rural Washington has not been harmed and that, on the contrary, consumers have benefited from the many competitive ETC designations facilitated by that decision.
  - E. Several other states, including Arizona, New Mexico, Kansas, Maine, Michigan, North Dakota, Oregon, Wisconsin, and West Virginia, have stressed the pro-competitive and pro-consumer benefits of service area redefinition.

- II. Competitors should not be punished for an ILEC's refusal to disaggregate and target high-cost support.**
  - A. Disaggregation largely resolves cream-skimming issues by removing higher levels of support from lower-cost areas.**
  - B. During the Rural Task Force deliberations, "both incumbent and competitive carriers agree[d] with the need to disaggregate and target universal support below the study area level." (RTF White Paper #6 at p. 6)**
  - C. In adopting its disaggregation rules, the FCC concluded that "as a general matter, support should be disaggregated and targeted below the study area level". A limited opt-out provision (Path 1) was provided for cases "where a carrier determines that, given the demographics, cost characteristics, and location of its service territory, and the lack of a realistic prospect of competition, disaggregation is not economically rational".**
  - D. Despite the administrative simplicity of filing a disaggregation plan, the overwhelming majority of rural ILECs nationwide have declined to disaggregate.**
  - E. ILECs then used their own failure to disaggregate support as a tool in opposing service area redefinitions, alleging that cream-skimming may occur.**
  - F. The solution is not to deny or hold up redefinition petitions, but to encourage ILECs and state commissions to explore whether to disaggregate support in areas where there may be cream-skimming concerns.**

## **The Colorado PUC's Redefinition Proposal Warrants Prompt FCC Concurrence**

### **I. The Petition Is Subject to Pre-*Virginia Cellular* Standards**

Because the timing of the underlying state decision makes this Petition indistinguishable from recently-granted petitions, this Petition should similarly receive FCC concurrence.

- A. The Colorado PUC adopted the proposed service area redefinition in October 2003, several months prior to the release of *Virginia Cellular* and *Highland Cellular*. Accordingly, "because of the timing of the underlying state . . . decision[]," its redefinition proposal "could not be in full compliance with the factors considered in [*Highland Cellular*]." *Report and Order*, FCC 05-46 at ¶ 77 n.217, ¶ 78 (rel. March 17, 2005) ("*2005 Report and Order*").
- B. Although the Petition itself was filed after the release of *Virginia Cellular* and *Highland Cellular*, so were the recently-granted CTC Telecom (Wisconsin), American Cellular Corporation (Wisconsin), and RCC Minnesota, Inc. (Minnesota) petitions. With regard to those petitions, the FCC stated: "We believe that because these proceedings were being conducted as [*Virginia Cellular* and *Highland Cellular*] were being released, it was difficult for the petitioners and their respective state commissions to be fully aware of the requirements of our decisions." *2005 Report and Order* at ¶ 77 n.217.

## II. The Petition Satisfies the FCC's Current Standards for Redefinition

The *2005 Report and Order* left intact the fact-intensive redefinition standards heralded by *Virginia Cellular* and *Highland Cellular*. The Petition satisfies those standards as follows:

- A. Each of the affected rural ILECs opted against disaggregation. Thus, each may be presumed to believe that the apportionment of support corresponded with costs and there were no significant cream-skimming opportunities that needed to be addressed. Should any cream-skimming concerns persist, they may file to disaggregate support at any time under the rules established by the FCC and the PUC.
- B. NECC submitted a population density analysis showing that cream-skimming will not result despite the ILECs' failure to disaggregate support. The respective population densities for areas within NECC's ETC service area and areas outside its ETC area are 2.14/16.42 (Eastern Slope), 0.84/1.72 (Sunflower Tel. Coop.), and 1.57/1.14 (Plains Coop. Tel. Assn.). With regard to Plains Coop., the difference in population density (0.43 persons per square mile) is too small to be of consequence. *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1579 (2004).
- C. The proposed redefinition will not result in NECC serving only portions of rural ILEC wire centers.

## **RCC's Kansas Redefinition Proposal Warrants Prompt FCC Concurrence**

### **I. The Petition Satisfies the FCC's Current Standards for Redefinition**

The March 17 *Report and Order* left intact the fact-intensive redefinition standards heralded by *Virginia Cellular* and *Highland Cellular*. The Petition satisfies those standards as follows:

- A. Two of the affected ILECs have disaggregated their support, effectively moving high per-line support levels out of densely populated areas and into sparsely populated rural areas where it is needed. To the extent the FCC has expressed concerns that disaggregation may not protect against cream-skimming where population densities vary greatly throughout the study area, those concerns are absent here because there is no great variation among wire centers in those ILECs' study areas.
- B. With regard to the remaining rural ILECs, which did not disaggregate their support, the Kansas Corporation Commission evaluated population density figures and concluded that "[r]edefinition of these rural LECs' service areas to a wire center basis is appropriate because RCC would not be serving just the high density/low cost wire centers. Rather, RCC would serve a general mix of low-cost and high-cost wire centers."
- C. The proposed redefinition will not result in RCC serving only portions of rural ILEC wire centers.

## **II. Opponents of Redefinition Failed to Challenge RCC's Petition on the Merits**

- A. TCA, the sole commenter in opposition to RCC's petition never argued that RCC is proposing to serve primarily low-cost, high-density portions of any affected rural ILEC's study area to the exclusion of high-cost areas. Nor did TCA argue that the disaggregation of support by two of the affected rural ILECs is anything less than a complete solution to any cream-skimming concerns that once might have existed in their study areas.
- B. Instead, TCA focuses on broad policy concerns – for example, terming service area redefinition as generally “unnecessary” and questioning the FCC's decision to rely on population density instead of unspecified “cost data,” – that would more properly have been raised in the rulemaking proceeding that led up to the March 17 *Report and Order*. Indeed, the policy arguments raised in TCA's comments on RCC's petition were rejected in that order.

## **The Cellcom Companies' Redefinition Proposal Warrants Prompt FCC Concurrence**

### **I. The Petition Is Indistinguishable from the Other Petitions Recently Granted by the FCC**

Because the timing of the underlying ETC grants makes this Petition indistinguishable from recently-granted petitions, this Petition should similarly receive FCC concurrence.

- A. The Wisconsin Public Service Commission ("WPSC") adopted the proposed service area redefinition in September 2003, several months prior to the release of *Virginia Cellular* and *Highland Cellular*. Accordingly, "because of the timing of the underlying state ETC designation decisions," its redefinition proposal "could not be in full compliance with the factors considered in [*Highland Cellular*]." *Federal-State Joint Board on Universal Service, Report and Order*, FCC 05-46 at ¶ 78 (rel. March 17, 2005) ("*2005 Report and Order*").
- B. In fact, the WPSC designated Cellcom on the same day it designated ALLTEL Communications, Inc., and several months prior to the designations of CTC Telecom, Inc. (designated March 22, 2004) and American Cellular Corporation (June 18, 2004). All three of those companies submitted petitions that were granted in the *2005 Report and Order*.
- C. Although the Petition itself was filed after the release of *Virginia Cellular* and *Highland Cellular*, so were the recently-granted CTC Telecom and American Cellular Corporation petitions. With regard to those petitions, the FCC stated: "We believe that because these proceedings were being conducted as [*Virginia Cellular* and *Highland Cellular*] were being released, it was difficult for the petitioners and their respective state commissions to be fully aware of the requirements of our decisions." *2005 Report and Order* at ¶ 77 n.217.

## **II. The Petition Satisfies the FCC's Current Standards for Redefinition**

The *2005 Report and Order* left intact the fact-intensive redefinition standards heralded by *Virginia Cellular* and *Highland Cellular*. The Petition satisfies those standards as follows:

- A. Two of the three affected ILECs have disaggregated their support, effectively moving high per-line support levels out of densely populated areas and into sparsely populated rural areas where it is needed. To the extent the FCC has expressed concerns that disaggregation may not protect against cream-skimming where population densities vary greatly throughout the study area, those concerns are absent here because there is no great variation among wire centers in those ILECs' study areas. Moreover, the FCC's concern that population density figures "do not take into account cost variability within specific wire centers, which may be particularly acute in rural areas" is similarly inapplicable here, since each carrier has disaggregated to multiple cost zones within individual wire centers.
- B. With regard to Marquette-Adams Telephone Company ("Marquette") the only affected ILEC that did not disaggregate its support, the Cellcom Companies submitted a population density analysis showing that cream-skimming will not result. Specifically, the two Marquette wire centers within the Cellcom Companies' ETC service area, Brooks and Oxford, have respective population densities of 27.1 and 30.65 persons per square mile, while the two remaining wire centers, Endeavor and Packwaukee, have respective population densities of 41.7 and 77.2 persons per square mile. Accordingly, there is no risk of cream-skimming by Nsighttel in Marquette's study area.
- C. The proposed redefinition will not result in the Cellcom Companies serving only portions of rural ILEC wire centers.